THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.26918 of 2005

Date:27.01.2006

Shaik Hussain.

----------Petitioner

The Vice Chairman and Managing Director and another.

----------Respondents

ORDER:

The petitioner was employed as a Conductor in the Nizamabad Depot of APSRTC. He was removed from service on 31.10.1983, on the allegation that he did not issue tickets to as many as 37 passengers. Challenging the same, the petitioner raised an Industrial Dispute, being I.D.No.316 of 1983, in the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad. The Labour Court upheld the order of removal, on 10.07.1986. Aggrieved thereby, the petitioner filed W.P.No.6514 of 1988. The Writ Petition was allowed by this Court through order, dated 06.09.1991, directing reinstatement of the petitioner. Back wages were denied to him. The petitioner filed W.A.No.1431 of 1996, insofar as the learned Single Judge did not grant the relief of payment of back wages. The Writ Appeal was dismissed by a Division bench of this Court on 12.12.1996. However, an observation was made to the effect that the petitioner can make a representation, to the appointing authority, claiming back wages, and directing that the same shall be considered, in accordance with law.

The petitioner made a representation on 21.4.1997 to the 2nd respondent claiming back wages. When no action has been taken thereon, he made a further representation, dated 15.04.2005. On a consideration of the same, the 2nd respondent issued proceedings, dated 26.04.2005, rejecting the claim of the petitioner. The same is challenged in this Writ Petition.

Sri S.Ravindranath, the learned counsel for the petitioner submits that the

Division Bench of this Court specifically permitted the petitioner to make a representation, to the respondents, claiming back wages, and in that view of the matter, it was obligatory on the part of the 2nd respondent, to have awarded back wages to the petitioner, once the order of dismissal was set aside by this Court in the Writ Petition. He contends that the reasons assigned by the 2nd respondent are not tenable.

The learned Standing Counsel for the respondents, on the other hand, submits that the petitioner failed to make out any case for payment of back wages, and in fact, the 2nd respondent does not have the power to grant such relief, once the order passed by him was the subject matter of an Industrial Dispute, Writ Petition, and thereafter, a Writ Appeal.

The petitioner made claim for back wages before the 2nd respondent, under a peculiar set of circumstances. Aggrieved by the order of removal, dated 31.10.1983, he approached the Labour Court by raising an Industrial Dispute, being I.D.No.316 of 1983. The Labour Court did not grant any relief to him. W.P.No.6514 of 1998, filed by the petitioner against the award in the I.D., was allowed by this Court with the following direction:

> *"Therefore, there is no fault on his part and he has not purposefully violated any rules. I think that the removal of the petitioner is not justified in this case particularly when he has not collected the fares from the 37 passengers. In these circumstances, the impugned order is set aside and the 1st respondent is directed to reinstate the petitioner without back wages within one month from the date of this order."*

Writ Appeal.No.1431 of 1996 filed by the petitioner herein was dismissed. An observation was made to the effect that the petitioner escaped from the severe punishment and that nothing has been shown to establish as to how the denial of back wages is contrary to law. All the same, the petitioner was permitted to make a representation to the respondents, claiming back wages. The permission, so accorded, by itself does not confer any right upon the petitioner,

nor does it create any obligation on the part of the respondents. Much would depend upon the legality of the claim

Once the 2nd respondent, the appointment authority, has passed an order of removal, he virtually has no role, to play in the matter. He has to implement the orders that may have been passed in appeal, review, Industrial Dispute or in Writ Proceedings. The occasion for him to deal with the matter once again would have arisen, if only the matter was remanded to him, by any authority or Court. Barring those rare circumstances, the 2nd respondent is not expected to deal with the mater, in any other manner. Such a course would amount to reviewing his own order. As is well known, power of review can be exercised, only when it is specifically conferred. The learned counsel for the petitioner is not able to trace such a power to the 2nd respondent. An innocuous and passing observation made by this Court, while dismissing the Writ Appeal, cannot confer power of review on the 2nd respondent.

Further, once this Court has decided on merits that the petitioner is not entitled for back wages, any view taken by the 2nd respondent would have run contrary to the same, and, in fact, may have amounted to contempt. Hence, this Court does not find any basis to interfere with the impugned order.

Therefore, the Writ Petition is dismissed. There shall be no order as to costs.

_____

27.01.2006

Note: L.R.Copy to be marked.

(B/o)

Jsu